

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

TRICIA VINEYARD, individually, and on behalf
of all similarly situated current citizens of Illinois,

Plaintiff,

-v.-

LA TERRA FINA USA, LLC,

Defendant.

Case No. 3:24-cv-00704-NJR
Hon. Nancy J. Rosenstengel

MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

Defendant La Terra Fina USA, LLC (“La Terra Fina”) respectfully moves the Court for an order granting it leave to file supplemental authority in support of its motion to dismiss Plaintiff’s Complaint (ECF No. 18). In support of this motion, La Terra Fina respectfully states as follows:

1. Counsel for La Terra Fina recently became aware of a decision issued shortly before La Terra Fina filed its motion to dismiss, *Valencia v. Snapple Beverage Corp.*, 2024 WL 1158476 (S.D.N.Y. Mar. 18, 2024), which first came to our attention after the motion to dismiss was filed. A true and correct copy of this decision is attached as Exhibit A.

2. In *Valencia*, like this case, the plaintiff challenged the labeling of a product because it contained citric acid. *Id.* at *1. The plaintiff alleged that certain beverages were deceptively labeled as “All Natural” because they contained industrially produced citric acid. *Id.* The *Valencia* court dismissed the claims with prejudice for failure to state a claim. *Id.* at *7.

3. The *Valencia* court held that the plaintiff failed to satisfy her pleading burden because “[p]laintiff’s ‘generalized statement about [the production of citric acid] is not enough to adequately allege the citric acid used in the Product[s] is industrially produced.’” *Id.* at *5 (quoting

Indiviglio v. B&G Foods, Inc., 2023 WL 9022866, at *4 (S.D.N.Y. Dec. 29, 2023)). Rather, “[t]o satisfy the pleading standards, plaintiff must draw a connection between the common industry practice and the actual practice used by defendant.” *Id.* (quoting *Indiviglio*, 2023 WL 9022866, at *4 and citing *Tarzian v. Kraft Heinz Foods Co.*, 2019 WL 5064732, at *4 (N.D. Ill. Oct. 9, 2019)). La Terra Fina advanced the same argument here. *See* ECF No. 18 at 5-10.

4. The *Valencia* court contrasted the facts to cases where plaintiffs “actually tested the product” but still “did not provide sufficient factual content” to support their claims. 2023 WL 9022866, at *5. Given those plaintiffs could not state a claim, “Plaintiff’s bare claim here that citric acid today is made from mold rather than citrus fruit cannot . . . be sufficient.” *Id.* La Terra Fina advanced the same argument here. *See* ECF No. 18 at 9-10.

5. Even if the plaintiff could show the citric acid in the products were industrially made, the *Valencia* court held, she still could not show that a reasonable consumer would “regard as unnatural citric acid derived from [the mold] *Aspergillus niger* – itself a natural product.” *Id.* at *6. The plaintiff “describes the citric acid as a ‘synthetic ingredient’ but describes no respect in which the citric acid derived from *Aspergillus niger* differs chemically from the citric acid derived from citrus fruits.” *Id.* Similarly, La Terra Fina pointed to FDA regulations providing that citric acid is a “naturally occurring constituent of plant and animal tissues” that can be made in multiple ways, one of which is derived from *Aspergillus niger*. *See* ECF No. 18 at 3, 10 (citing 21 C.F.R. § 184.1033(a)).

6. Plaintiff will not be prejudiced if the Court grants this motion, because she has the opportunity to address *Valencia* in her opposition brief, due on May 1, 2024.

For the reasons stated above, La Terra Fina respectfully requests leave to file the supplemental authority attached as Exhibit A in support of its motion to dismiss the Complaint.

Dated: April 24, 2024

Respectfully submitted,

By: /s/ Amanda N. Catalano

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CERTIFICATE OF SERVICE

I, Amanda N. Catalano, hereby certify that on April 24, 2024 a true and accurate copy of the foregoing was electronically filed with the Clerk of Court by using the Court's CM/ECF system, to be served via operation of the Court's electronic filing system upon all counsel of record.

/s/ Amanda N. Catalano
Amanda N. Catalano